Supreme Court, U. S.
FILED
JUN 27 1979
MICHAEL RODAK, JR., CLERK

No. 78-1706

In the Supreme Court of the United States

OCTOBER TERM, 1978

HOLMES FORESTER CROUCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1706

HOLMES FORESTER CROUCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks review of the decision below that he was not entitled to a religious exemption from the tax on income from self-employment under Section 1402(h) of the Internal Revenue Code of 1954.

The pertinent facts are as follows: Petitioner has been self-employed as a tax practitioner since 1972 (I-R. 62)[1] and in that capacity earned income from self-employment within the meaning of Section 1402(b) of the Code. In his application for exemption from the payment of $2,419.10 in self-employment taxes imposed on that income for 1972-1974 (I-R. 62-63, 66), petitioner claimed an exemption under Section 1402(h). That provision permits an exemption from self-employment taxes for individuals who, pursuant to the established tenets or teachings of a religious sect of which they are a member, are conscien-

[1] "I-R." and "II-R." references are to volumes one and two of the record in the court of appeals.

tiously opposed to the acceptance of benefits of any private or public insurance (including social security) which makes payments in the event of death, disability, old age, retirement, or which provides benefits for medical care. In order to qualify for this exemption, the religious sect in question must have been in existence since 1950 (the year the social security system was extended[2] to self-employed persons), and the sect must have had an established practice of reasonably providing for its dependent members.

Petitioner is not a member of a religious sect that meets the qualifications of Section 1402(h).[3] Nevertheless, he claimed an exemption under that provision on the basis of his conscientious opposition to the social security system and his asserted ability to provide for his own old age and retirement needs. On audit, the Commissioner of Internal Revenue denied petitioner's applications for exemption on the ground that petitioner did not meet the requirements of Section 1402(h). Petitioner thereafter paid the self-employment taxes for which he sought exemption and

---

[2]Section 208(a) of the Social Security Act Amendments of 1950, ch. 809, 64 Stat. 540, added Sections 480 through 482 to the Internal Revenue Code of 1939, imposing a tax on self-employment income.

[3]Petitioner's exemption application for 1972 listed his religious affiliation as "Nonsectarian-Independent" (I-R. 6). His subsequent applications listed a religious affiliation with the "Universal Life Church" (I-R. 8, 92). The Universal Life Church, incorporated on May 2, 1962, has no traditional doctrine and gives each member the right to his own convictions and a right to express and practice them. It recognizes everyone's beliefs and practices as long as they do not infringe on the rights of others. The Church has no established tenets or teachings with respect to public or private insurance providing for old age, disability, retirement or medical care, and it makes no provisions for such benefits for its members (I-R. 65-66).

brought a suit for refund in the United States District Court for the Northern District of California, claiming that Section 1402(h) violated the First and Fifth Amendments. The district court rejected petitioner's challenge (I-R. 139; II-R. 4), and the court of appeals affirmed (Pet. App. A).

1. The decision below correctly held that Section 1402(h) of the Code does not violate the First Amendment. That provision was enacted to accommodate sincere religious beliefs that prevent the acceptance of benefits available under public and private insurance programs. The congressional purpose was neither the advancement nor the inhibition of religion. Indeed, as this Court observed in *Walz* v. *Tax Commission*, 397 U.S. 664, 675 (1970), there is "no genuine nexus between tax exemption and establishment of religion" that is contrary to the Establishment Clause. See *Gillette* v. *United States*, 401 U.S. 437, 454 (1971): " 'Neutrality' in matters of religion is not inconsistent with 'benevolence' by way of exemptions from onerous duties." See also *Selective Draft Law Cases*, 245 U.S. 366 (1918).

Likewise, Section 1402(h) does not violate the Free Exercise Clause. It is well settled that the freedom to exercise one's religious beliefs is subject to legitimate legislative contraints where the legislation serves a sufficient public interest. *Braunfeld* v. *Brown*, 366 U.S. 599 (1961); *Reynolds* v. *United States*, 98 U.S. 145 (1878); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944). Cf. *NLRB* v. *Catholic Bishop of Chicago*, No. 77-752 (Mar. 21, 1979).

Petitioner's complaint with respect to Section 1402(h) is that his ineligibility for a religious exemption requires him to participate in the social security system despite his willingness and asserted ability to provide for his own needs. But the fact that petitioner is required to pay into the social security system constitutes at most an indirect burden on the exercise of his personal religion and does not render the statute unconstitutional. See *Braunfeld* v. *Brown, supra*; see also *Henson* v. *Commissioner*, 66 T.C. 835 (1976); *Palmer* v. *Commissioner*, 52 T.C. 310 (1969).[4]

[4]Moreover, Section 1402(h) does not unconstitutionally discriminate against persons, like petitioner, who fall outside the scope of those narrowly defined provisions. As this Court pointed out in *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 24-25 (1916), the only restriction imposed by the Due Process Clause on the exercise of the taxing power is that the statute not be "so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property * * * or, what is equivalent thereto, * * * so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion." Section 1402(h) does not exempt all persons having religious objections to the social security system, but only members of sects which have both established tenets against private or public insurance and also an established practice of providing for their dependent members. Congress could properly choose to accommodate the religious objections of such sects because practices regarding the care of dependent members made it unnecessary to bring them within the scope of the social security system.

2. Contrary to petitioner's further argument (Pet. 12-13), the fact that Section 1402(h) applies only to sects that have been in existence since 1950 does not invalidate the statute. Confining the exemption to sects that were established prior to the extension of social security coverage to self-employed persons is reasonably related to the purpose of the exemption. As this Court observed in a similar context in *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6-7 (1970), "Congress does not exceed its power to tax nor does it violate the Fifth Amendment when it refuses to exempt from tax newly formed corporations, the multiplication of which might burden otherwise valid federal programs."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1979

DOJ-1979-06